Held, allowing the appeal: as in this case the prosecution witness who had seen the smoke emitted expressed the opinion that it was likely to cause annoyance to others and one of them had given the reason why he was of that opinion, a case had been made out by the prosecution which if unrebutted would warrant a conviction.

Order of acquittal and discharge set aside and case remitted back to the learned magistrate to call upon the defence.

Case referred to:—

(1) *Maguire* v. *Crouch* [1941] 1 K.B. 108.

MAGISTRATE'S CRIMINAL APPEAL.

Hassan bin Ishak (Deputy Public Prosecutor) for the appellant.

Syed Hassan Al-Jeffri for the respondent.

Ibrahim J.: This is an appeal by the Public Prosecutor against the decision of the learned magistrate acquitting and discharging the respondent at the close of the prosecution case on the following charge:—

"That you on 29.4.67 at about 10.00 a.m. at 4½ m.s. Jalan Malim, Melaka, in the State of Melaka, being the driver of a motor car taxi No. MA 1211, did use the said vehicle on the road emitting smoke, the emission of which was likely to cause annoyance to any person, and that you have thereby committed an offence under rule 107 of the Motor Vehicles (Construction & Use) Rules, 1959, and punishable under section 146(1)(d) of the Road Traffic Ordinance, 1958."

To establish the charge the prosecution produced two witnesses. According to P.W.1, Police Sgt. 11773, he saw the car driven by the respondent which was coming from the direction of Malacca towards Alor Gajah emitting a lot of smoke sufficient in his opinion to cause annoyance to those persons who might be following it by blocking their view. He stopped the car. The vehicle examiner, P.W.2, examined the car and when he pressed the accellerator half-way down, the engine emitted excessive black smoke which, according to him was likely to cause annoyance to others. P.W.2 did not notice the car until it was stopped but the smoke emitted when he pressed the accellerator, tended to corroborate what P.W.1 had seen before the car was stopped.

The learned magistrate held the view that for this offence to be committed there must be a complaint by the specific person that the smoke emitted was likely to cause annoyance to him and as the prosecution had not produced such person he acquitted and discharged the respondent without calling for his defence.

The charge in this case was not that the smoke emitted had caused annoyance to any person but was that it was likely to cause annoyance to any person and in my view the learned magistrate was wrong in holding that there must be a specific person to whom annoyance was likely to be caused by the smoke emitted.

Section 50 of the Road Traffic Act, 1930 (20 & 21 Geo. 5, c. 43) provides that:—

"If any person in charge of a vehicle causes or permits the vehicle . . . . to remain at rest on any road in such a position or in such condition or in such circumstances as to be likely to cause danger to other persons using the road, he shall be guilty of an offence."

In *Maguire* v. *Crouch* [1] which deals with the said section 50, Lord Caldecote C.J. in the course of his judgment at page 110 said:—

"In my opinion emphasis is to be placed on the words 'likely to cause danger.' I do not think they mean the same as 'is causing danger.' It is sufficient if the vehicle is left in such circumstances as to be likely to cause danger, without the danger being actually caused."

As in this case both P.W.1 and P.W.2 who had seen the smoke emitted expressed the opinion that it was likely to cause annoyance to others and as P.W.1 had given the reason why he was of that opinion I am of the view that a case had been made out by the prosecution which if unrebutted would warrant a conviction.

I therefore allow the appeal, set aside the order of acquittal and discharge and remit this case back to the learned magistrate for the defence to be called.

Appeal allowed.

Solicitors: *Aljeffri & Co.*

NG CHUAN SENG v. TAN AH YOKE

[A.C.J. (Ibrahim J.) March 27, 1969]
[Malacca — Civil Appeal No. 9 of 1968]

Family Law — Maintenance order — Inadmissible evidence — Maintenance order set aside.

Evidence — Evidence of Senior Chinese Affairs Officer before whom parties had appeared — Whether without prejudice.

In an application by a wife for maintenance evidence was given by a Senior Chinese Affairs Officer before whom the parties had appeared with a view to reconciliation. The magistrate took the evidence of the officer into consideration and ordered the husband to pay maintenance. Counsel for the husband had objected to the evidence of the officer. The husband appealed against the maintenance order.

Held, allowing the appeal: as what took place before the Senior Chinese Affairs Officer was without prejudice his evidence was not admissible, and in the circumstances of this case the maintenance order must be set aside.

Cases referred to:—

(1) *McTaggart* v. *McTaggart* [1948] 2 All E.R. 754; [1949] P. 94; [1949] L.J.R. 82.

(2) *Mole* v. *Mole* [1950] 2 All E.R. 328.

(3) *Theodoropoulas* v. *Theodoropoulas* [1963] 2 All E.R. 772.

MAGISTRATE'S CIVIL APPEAL.

K. D'Cruz for the appellant.

John Ang for the respondent.

Ibrahim J.: This is an appeal by the husband against the decision of the learned magistrate who ordered him to pay $60 per month as maintenance for his wife with effect from 1st October 1967.

The learned magistrate found that the wife was compelled to leave the matrimonial home and that the husband's offer to take her back was not sincere. In so finding he took into consideration the evidence given by the Senior Chinese Affairs Officer, Malacca (P.W.2) before whom the parties had appeared with a view to reconciliation. Counsel for the husband had objected to admission of P.W.2's evidence but in fairness to the learned magistrate no authority was cited in support thereof.

It is clear from the judgment in *McTaggart* v. *McTaggart*,[1] *Mole* v. *Mole*,[2] and *Theodoropoulas* v. *Theodoropoulas* [3] and other cases that the evidence of P.W.2 was not admissible. In *Mole* v. *Mole*,[2] for instance, Denning L.J. in his judgment at page 329 said:—

"I take it that the principle of *McTaggart* v. *McTaggart* applies not only to probation officers, but also to other persons such as clergy, doctors, or marriage guidance counsellors, to whom the parties resort with a view to reconciliation when there is a tacit understanding that the conversations are without prejudice."

It would be purely speculative for this court to say what assessment the learned magistrate would have given to the credibility of the wife (P.W.1) or the husband (D.W.1) whom he had heard and seen and whether he would have come to the same finding if P.W.2 had not given evidence and in the circumstances of this case I would allow this appeal, set aside the maintenance order and remit the case back to the magistrate's court for re-hearing before another magistrate. There will be no order as to the costs of this appeal.

Appeal allowed; re-hearing ordered.

Solicitors: *Joseph & Son; Sault, Keith Sellar & Co.*

GAN LEONG GEE & ANOR. v. PUBLIC PROSECUTOR

[A.Cr.J. (Choor Singh J.) March 28, 1969]

[Singapore — Magistrate's Appeal Nos. 58 & 59 of 1968]

Penal Code, ss. 415, 120A & 511 — Criminal conspiracy to cheat bank — Obtaining shipping guarantee by deceit.

Evidence — Evidence of accomplice — Corroboration — Nature of corroboration required.

The two appellants, together with a third person named Koh Cho Phuan, were convicted by a district court on a charge of conspiracy to cheat, on 42 charges of cheating and six charges of attempted cheating. The three convicted persons were sentenced to three years imprisonment each for the offence of conspiracy, three years imprisonment in respect of each of the 42 offences of cheating and 18 months imprisonment in respect of each of the six offences of attempted cheating. All the terms of imprisonment were ordered to run concurrently. The two appellants appealed against their conviction on the aforesaid charges and the sentences imposed on them. There was no appeal by Koh Cho Phuan.

The question for determination in this appeal was whether or not the two appellants were parties to the conspiracy to cheat the bank, for if they were not, then they could not be guilty of the cheating and attempted cheating offences.

The second appellant was convicted on the evidence of one Sim who was a self confessed criminal, an accomplice of the conspirators and the principal witness for the prosecution.

Held: (1) an appellate court will not allow a conviction obtained on the uncorroborated evidence of an accomplice to stand unless there is a clear indication by the trial court that it was aware that there was no corroboration and that inspite of the absence of corroboration it was so convinced of the truth of the accomplice's evidence that if felt safe in convicting the accused;

, (2) the evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other words it must be evidence which implicates him, that is, which confirm in some material particular not only that the crime has been committed but also that the accused committed it;

(3) there was no evidence in this case which could be regarded as corroborative evidence which in any way connected the second appellant with the offence of conspiracy to cheat the bank;

(4) the learned district judge had not stated in his grounds of judgment that he was aware that the evidence against the second appellant of Sim, the accomplice, was uncorroborated and as there was no other evidence against the second appellant, his conviction could not be allowed to stand;

(5) as for the 1st appellant, apart from the evidence of Sim, there was ample other evidence which was sufficient to sustain a conviction against him and the learned district judge was fully justified in convicting the 1st appellant on all the charges on which he was tried.

Cases referred to:—

(1) *R.* v. *Baskerville* [1916] 2 K.B. 658.

(2) *Chiu Nang Hong* v. *Public Prosecutor* [1965] 1 M.L.J. 40, P.C.

MAGISTRATE'S CRIMINAL APPEAL.

1st appellant in person.

E.L. Gardner, Q.C. (*Yin Ee Kheng* with him) for the 2nd appellant.